

2009 DRAFTING REQUEST

Bill

Received: 11/13/2009

Received By: chanaman

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: John Wagnitz

This file may be shown to any legislator: NO

Drafter: chanaman

May Contact:

Addl. Drafters: btradewe

Subject: Criminal Law - miscellaneous
Criminal Law - sentencing

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Prohibit persons who have been convicted of certain felonies from possessing dogs

Instructions:

See attached--2007 SB-38

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 11/17/2009 btradewe 11/17/2009	kfollett 11/30/2009		_____ _____ _____ _____			S&L Crime
/1			mduchek 12/02/2009	_____ _____	mbarman 12/02/2009	lparisi 12/10/2009	

FE Sent For:

→ At Intro.

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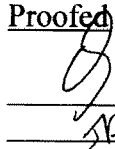
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/?	chanaman	11/15/09 11/30	11/30				

FE Sent For:

<END>

Hanaman, Cathlene

From: Wagnitz, John
Sent: Thursday, November 12, 2009 4:30 PM
To: Hanaman, Cathlene
Subject: Bill draft request

Cathlene,

Could you please redraft 2007 SB-38 for Senator Hansen?

Thanks,

John Wagnitz
Office of State Senator Dave Hansen
18 South, State Capitol
phone: (608) 266-5670

2007 SENATE BILL 38
[Link to Bill History](#)

February 14, 2007 - Introduced by Senator Hansen, cosponsored by
Representatives Suder, Albers, Sheridan, Gunderson, A. Ott and Musser.
Referred to Committee on Judiciary and Corrections.

Pg1Ln1 An Act to amend 938.396 (2g) (d); and to create 173.29, 938.3416, 941.292,
Pg1Ln2 971.17 (1i) and 973.0336 of the statutes; relating to: possession of dogs by
Pg1Ln3 certain felony offenders and providing a penalty.

Analysis by the Legislative Reference Bureau
SB38

Current law prohibits a person from possessing a firearm if he or she is a felony offender. A person is a felony offender if any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect, or illness. If a felony offender violates the prohibition against possessing a firearm, he or she may be fined not more than \$25,000 or imprisoned for not more than ten years or both. Current law also provides that a felony offender may have the right to possess a firearm restored under certain circumstances. For instance, if a person found guilty of a felony is pardoned he or she may again possess a firearm if authorized. A person adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult may possess a firearm if a court determines that the person is not likely to act in a manner dangerous to public safety. Finally, a person who has been found not guilty of a felony by reason of insanity or mental disease, defect, or illness may again possess a firearm if a court determines that the person is no longer insane or no longer has a mental disease, defect, or illness and that the person is not likely to act in a manner dangerous to public safety.

SB38

This bill prohibits, for a specified period of time, certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by the Department of Agriculture, Trade and Consumer Protection, or a dog that has not been spayed or neutered (intact dog) or from possessing a dog that does not have an identification microchip implanted in it. The felony offenders to whom these prohibitions apply are those whose status as felony offenders is based on the commission of an act that is classified under the bill as a serious felony and who have

not been pardoned for that offense (serious felony offenders). A serious felony offender who violates any of the prohibitions may be fined up to \$10,000, imprisoned for up to nine months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog or an intact dog and a person or an animal suffers great bodily harm or death due to the violation, the serious felony offender may be fined up to \$10,000, imprisoned for up to three years and six months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog or an intact dog and a person suffers great bodily harm or death due to the violation and the person knowingly allowed the dog to run loose or failed to take steps to control the dog, the serious felony offender may be fined up to \$10,000, imprisoned for up to six years, or both. SB38

Unless the serious felony offender is on extended supervision or another supervised status (extended supervision), these prohibitions apply to the serious felony offender for a period of ten years following: 1) any period of incarceration for the serious felony; 2) the conviction for the serious felony if the sentence does not include a period of incarceration; 3) the delinquency adjudication for the serious felony; or 4) the finding of not guilty of the serious felony by reason of insanity or mental disease, defect, or illness. If the serious felony offender is on extended supervision, the prohibition period is extended until he or she is no longer on extended supervision. SB38

This bill allows a serious felony offender to request a court for an exemption from the prohibitions if the exemption is reasonably needed to earn a livelihood or as a condition of employment and will not endanger public safety. A serious felony offender seeking an exemption must file a motion in the circuit court for the county in which he or she will possess, control, or reside with the vicious or intact dog or possess a dog without an identification microchip. The serious felony offender must provide a copy of the motion to the district attorney for that county, who must in turn make a reasonable attempt to contact local law enforcement agencies to inform them that the serious felony offender has made a request for an exemption and to solicit from the agencies any information that may be relevant to whether the exemption should be granted. An exemption to the prohibition granted by a court is valid only in the county in which that court is located; if a serious felony offender is seeking an exemption in more than one county, he or she must file a motion for an exemption in each applicable county.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

In 11/17

15F

2007 **SENATE BILL 38**

February 14, 2007 - Introduced by Senator HANSEN, cosponsored by Representatives SUDER, ALBERS, SHERIDAN, GUNDERSON, A. OTT and MUSSER. Referred to Committee on Judiciary and Corrections.

Gen

- 1 AN ACT *to amend* 938.396 (2g) (d); and *to create* 173.29, 938.3416, 941.292,
2 971.17 (1i) and 973.0336 of the statutes; **relating to:** possession of dogs by
3 certain felony offenders and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from possessing a firearm if he or she is a felony offender. A person is a felony offender if any of the following applies: 1) he or she has been found guilty of a felony; 2) he or she has been adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult; or 3) he or she has been found not guilty of a felony by reason of mental disease, defect, or illness. If a felony offender violates the prohibition against possessing a firearm, he or she may be fined not more than \$25,000 or imprisoned for not more than ten years or both. Current law also provides that a felony offender may have the right to possess a firearm restored under certain circumstances. For instance, if a person found guilty of a felony is pardoned he or she may again possess a firearm if authorized. A person adjudicated delinquent as a juvenile for an act that would have been a felony if it had been committed by an adult may possess a firearm if a court determines that the person is not likely to act in a manner dangerous to public safety. Finally, a person who has been found not guilty of a felony by reason of insanity or mental disease, defect, or illness may again possess a firearm if a court determines that the person is no longer insane or no longer has a mental disease, defect, or illness and that the person is not likely to act in a manner dangerous to public safety.

SENATE BILL 38

This bill prohibits, for a specified period of time, certain felony offenders from possessing, controlling, or residing with a vicious dog, as determined by the Department of Agriculture, Trade and Consumer Protection, or a dog that has not been spayed or neutered (intact dog) ^{and} or from possessing a dog that does not have an identification microchip implanted in it. The felony offenders to whom these prohibitions apply are those whose status as felony offenders is based on the commission of an act that is classified under the bill as a serious felony ^{a humane officer or a law enforcement officer} and who have not been pardoned for that offense (serious felony offenders). A serious felony offender who violates any of the prohibitions may be fined up to \$10,000, imprisoned for up to nine months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog ^{or} or an intact dog and a person or an animal suffers great bodily harm or death due to the violation, the serious felony offender may be fined up to \$10,000, imprisoned for up to three years and six months, or both. If a serious felony offender violates the prohibition against possessing, controlling, or residing with a vicious dog ^{or} or an intact dog and a person suffers great bodily harm or death due to the violation and the person knowingly allowed the dog to run loose or failed to take steps to control the dog, the serious felony offender may be fined up to \$10,000, imprisoned for up to six years, or both. ^{or}

Unless the serious felony offender is on extended supervision or another supervised status (extended supervision), these prohibitions apply to the serious felony offender for a period of ten years following: 1) any period of incarceration for the serious felony; 2) the conviction for the serious felony if the sentence does not include a period of incarceration; 3) the delinquency adjudication for the serious felony; or 4) the finding of not guilty of the serious felony by reason of insanity or mental disease, defect, or illness. If the serious felony offender is on extended supervision, the prohibition period is extended until he or she is no longer on extended supervision.

^{may} Under this bill, ^{may} allows a serious felony offender to request a court for an exemption from the prohibitions if the exemption is reasonably needed to earn a livelihood or as a condition of employment and will not endanger public safety. A serious felony offender seeking an exemption must file a motion in the circuit court for the county in which he or she will possess, control, or reside with the vicious ^{or} or intact dog or possess a dog without an identification microchip. The serious felony offender must provide a copy of the motion to the district attorney for that county, who must in turn make a reasonable attempt to contact local law enforcement agencies to inform them ^{of the} that the serious felony offender has made a request for an exemption and to solicit from the agencies any information that may be relevant to whether the exemption ^{request} should be granted. An exemption to the prohibition granted by a court is valid only in the county in which that court is located; if a serious felony offender is seeking an exemption in more than one county, he or she must file a motion for an exemption in each applicable county.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

SENATE BILL 38

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 173.29 of the statutes is created to read:

173.29 Vicious dogs. (1) DEFINITION. In this section, "serious physical injury" means physical injury that creates a substantial risk of death; that causes serious disfigurement, protracted impairment of health, or impairment of a bodily organ; or that necessitates plastic surgery.

(2) **REQUEST FOR DETERMINATION.** If a humane officer or law enforcement officer, after conducting an investigation, determines that a dog satisfies one of the standards under sub. (3), the humane officer or law enforcement officer may request the department to determine that the dog is vicious for the purposes of s. 941.292.

Before completing the investigation, the humane officer or law enforcement officer shall notify the owner or custodian of the dog of the incidents that are the basis for the investigation.

(3) **STANDARDS.** The department may determine that a dog is vicious if one of the following applies:

(a) The dog, without justification, attacked a person and caused serious physical injury or death.

(b) The dog has done any of the following on 3 occasions, without justification:

1. ^{Bitten} Bit a person without causing serious physical injury or death.

2. While off of the property of its owner or custodian, attacked a cat or dog and caused serious physical injury to, or the death of, the cat or dog.

SENATE BILL 38

3. While off of the property of its owner or custodian, behaved in a manner that a reasonable person would believe posed a significant, imminent threat of serious physical injury or death to a person, cat, or dog.

(4) JUSTIFICATION. The department ^{humane officer or law enforcement officer} may not determine that a dog's actions are without justification if any of the following applies:

(a) A person threatened, bitten, or attacked by the dog was committing a crime against the owner or custodian of the dog or was committing a willful trespass or other tort upon property owned or occupied by the owner or custodian of the dog.

(b) A person threatened, bitten, or attacked by the dog was abusing, assaulting, or physically threatening the dog or its offspring or had previously abused, assaulted, or physically threatened the dog or its offspring.

(c) A cat or dog threatened or attacked by the dog was attacking or threatening to attack the dog or its offspring.

(d) The dog was responding to pain or injury or was protecting itself, its offspring, another dog living on the same property, its owner or custodian, or a person living in the household of its owner or custodian.

(5) NOTICE. The department shall notify the owner or custodian of a dog if the department determines that the dog is vicious. In the notice, the department shall include a description of s. 949.292 and of the right to a hearing under s. 227.42.

SECTION 2. 938.3416 of the statutes is created to read:

938.3416 Delinquency adjudication; restriction on possessing certain dogs. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a serious felony, as defined in s. 941.292 (1) (d), the court shall inform the juvenile of the requirements and penalties under s. 941.292.

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1 SECTION 3. 938.396 (2g) (d) of the statutes is amended to read:

2 938.396 (2g) (d) *Bail; impeachment; firearm possession of prohibited items.*

3 Upon request of a court of criminal jurisdiction or a district attorney to review court
4 records for the purpose of setting bail under ch. 969, impeaching a witness under s.
5 906.09, or investigating and determining whether a person has possessed a firearm
6 in violation of s. 941.29 (2) or, body armor in violation of s. 941.291 (2), or a dog in
7 violation of s. 941.292, or upon request of a court of civil jurisdiction or the attorney
8 for a party to a proceeding in that court to review court records for the purpose of
9 impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction
10 under this chapter and ch. 48 shall open for inspection by authorized representatives
11 of the requester the records of the court relating to any juvenile who has been the
12 subject of a proceeding under this chapter.

13 SECTION 4. 941.292 of the statutes is created to read:

14 **941.292 Possession of certain dogs. (1) DEFINITIONS.** In this section:

15 (a) "Confinement term" means the period during which a person is incarcerated
16 in prison.

17 (b) "Identifying microchip" means a microchip that is implanted in a dog by a
18 licensed veterinarian and that identifies the owner of the dog.

19 (c) "Intact dog" means a dog that is over 12 weeks old and that has not been
20 spayed or neutered.

21 (d) "Serious felony" means a felony under s. 940.01, 940.02, 940.03, 940.05,
22 940.19 (2), (4), or (5), 940.225 (1) or (2), 940.31, 943.02, 943.10 (2), 943.23 (1g), 943.32
23 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c) or (3) (a), 948.05,
24 948.08, or 948.30 (2) or a felony violation of ch. 961.

25 (e) "Vicious dog" means a dog that is determined to be vicious under s. 173.29.

SENATE BILL 38

SECTION 4

1 (2) APPLICABILITY. A person is subject to the requirements and penalties of this
2 section if any of the following apply^{ies}.

3 (a) 1. He or she has been convicted of a serious felony in this state and was
4 serving a confinement[✓] term for that conviction within the preceding 10 years.

5 2. He or she has been convicted of a crime elsewhere that would be a serious[✓]
6 felony if committed in this state and was serving a confinement[✓] term for that
7 conviction within the preceding 10 years.

8 (b) 1. He or she has been convicted of a serious felony in this state within the
9 preceding 10 years.

10 2. Within the preceding 10 years, he or she has been convicted of a crime
11 elsewhere that would be a serious felony if committed in this state.

12 (c) 1. He or she is on extended supervision as part of a sentence following a
13 conviction for the^{of a} serious felony or is on parole or probation following the^a conviction
14 for the^{of a} serious felony.

15 2. He or she is on a supervised status following a conviction for a crime
16 elsewhere that would be a serious felony if committed in this state.

17 (d) He or she has been adjudicated delinquent within the preceding 10 years
18 for an act that if committed by an adult in this state would be a serious felony.

19 (e) He or she has been found not guilty within the preceding 10 years of a
20 serious felony, or^{of} a crime elsewhere that would be a serious felony if committed in
21 this state, by reason of insanity or mental disease, defect, or illness.

22 (3) PROHIBITIONS. A person specified in sub. (2) may not do any of the following:

23 (a) Possess, control, or reside with a vicious dog.

24 (b) Possess, control, or reside with an intact dog.

SENATE BILL 38

b
1 (c) Possess a dog over 12 weeks of age that does not have an identifying
2 microchip.

3 (4) PENALTIES. (a) ^{Exemption as provided in par. (b) and (c)} Whoever violates sub. (3) is guilty of a Class A misdemeanor.

4 (b) Whoever violates sub. (3) (a) or (b) is guilty of a Class I felony if a person or
5 an animal suffers great bodily harm or death as a result of the violation.

6 (c) Whoever violates sub. (3) (a) or (b) is guilty of a Class H felony if an
7 individual suffers great bodily harm or death as a result of the violation and the
8 person knowingly allowed the dog to run loose or failed to take steps to keep the dog
9 in an enclosure or under control.

10 (5) EXEMPTION ^{Applicability.} (This section does not apply to any person specified in sub. (1)
11 who has received a pardon with respect to the serious felony.

12 (6) REQUEST FOR EXEMPTION. (a) A person specified in sub. (1) may request an
13 exemption from a prohibition under sub. (3) if all of the following apply:

14 1. The person has a reasonable need to possess, control, or reside with a vicious
15 dog or an intact dog or to possess a dog without an identifying microchip, to earn a
16 livelihood or as a condition of employment.

17 2. Exempting the person from ^{the} prohibition under sub. (3) will not endanger
18 public safety.

19 (b) A person seeking an exemption under this subsection from the prohibition
20 under sub. (3) shall request the exemption by filing a written motion in the circuit
21 court for the county in which the person will possess, control, or reside with the
22 vicious or intact dog or possess a dog without an identifying microchip. ^(b) (A person who
23 files a motion under ^(a) this paragraph shall send a copy of the motion to the district
24 attorney for the county in which the motion is filed. The district attorney shall make
25 a reasonable attempt to contact the county sheriff and, if applicable, the chief of

WS
7-12
(c)
A court
shall
grant a
request
under
par. (a)

move
up

SENATE BILL 38

SECTION 4

1 police of a city, village, or town in the county for the purpose of informing the sheriff
2 and the chief of police that the person has made a request for an exemption and to
3 solicit from the sheriff and chief of police any information that may be relevant to the
4 criteria specified in par. (a) 1. and 2. *move to pg. 7*

5 **SECTION 5.** 971.17 (1i) of the statutes is created to read:

6 971.17 (1i) NOTICE OF RESTRICTIONS ON POSSESSION OF A DOG. If the defendant
7 under sub. (1) is found not guilty of a serious felony, as defined in s. 941.292 (1) (d),
8 by reason of mental disease or defect, the court shall inform the defendant of the
9 requirements and penalties under s. 941.292.

10 **SECTION 6.** 973.0336 of the statutes is created to read:

11 **973.0336 Sentencing; restriction on possession of a dog.** Whenever a
12 court imposes a sentence or places a defendant on probation for a conviction for a
13 serious felony, as defined in s. 941.292 (1) (d), the court shall inform the defendant
14 of the requirements and penalties under s. 941.292.

15 **SECTION 7. Initial applicability.**

16 (1) POSSESSION OF A DOG.

17 (a) In this subsection, "serious felony" has the meaning given in section 941.292
18 (1) (d) of the statutes, as created by this act

19 (b) The treatment of section 941.292 of the statutes first applies to the
20 possession of a dog that occurs on the effective date of this ^{paragraph} ~~subsection~~ but does not
21 preclude the counting of an act that was committed before the effective date of this
22 paragraph for purposes of determining whether any of the following makes a person
23 subject to section 941.292 of the statutes, as created by this act

24 1. The person has been convicted of a serious felony in this state.

SENATE BILL 38

2. The person has been convicted of a crime elsewhere that would be a serious felony if committed in this state.

3. The person has been adjudicated delinquent for an act that if committed by an adult in this state would be a serious felony.

4. The person has been found not guilty of a serious felony in this state by reason of mental disease or defect.

5. The person has been found not guilty of or not responsible for a crime elsewhere by reason of insanity or mental disease, defect, or illness if the crime would be a serious felony in this state.

(2) INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3416 of the statutes first applies to dispositional hearings that occur on the effective date of this subsection.

(3) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1) of the statutes first applies to commitment hearings that occur on the effective date of this subsection.

(4) INFORMATION AT SENTENCING. The treatment of section 973.0336 of the statutes first applies to sentencing proceedings that occur on the effective date of this subsection.✓

(END)

**SENATE AMENDMENT 1,
TO 2007 SENATE BILL 38**

January 7, 2008 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, AND HOUSING.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 6: delete "REQUEST FOR DETERMINATION" and substitute
3 "DETERMINATION".

4 **2.** Page 3, line 8: delete the material beginning with "request" and ending with
5 "investigation" on line 10 and substitute "issue a written order to the owner or
6 custodian of the dog declaring the dog to be vicious for purposes of s. 941.292. In the
7 written order".

8 **3.** Page 3, line 12: after "investigation." insert "The written order shall include
9 a description of s. 941.292 and of the right to a hearing under ch. 68".

10 **4.** Page 3, line 13: delete "department" and substitute "humane officer or law
11 enforcement officer".

5. Page 3, line 19: delete “While off of the property of its owner or custodian, attacked” and substitute “Attacked”.

6. Page 4, line 1: delete “While off of the property of its owner or custodian, behaved” and substitute “Behaved”.

7. Page 4, line 4: delete “department” and substitute “humane officer or law enforcement officer”.

8. Page 4, line 17: delete lines 17 to 19.

9. Page 7, line 10: after “EXEMPTION.” insert “(a)”.

10. Page 7, line 11: ~~after that line insert:~~

“(b) Subsection (3) (a) does not apply to a person if any of the following applies:

1. Not more than 5 days have elapsed since the person received a written order under s. 173.29 declaring the dog vicious.
2. A hearing is pending under ch. 68”.

(END)

INS

7-12

Parisi, Lori

From: Wagnitz, John
Sent: Thursday, December 10, 2009 2:38 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3857/1 Topic: Prohibit persons who have been convicted of certain felonies from possessing dogs

Please Jacket LRB 09-3857/1 for the SENATE.